

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON**

BILLY JOE MUNSEY,

Plaintiff,

v.

CIVIL ACTION NO. 3:21-cv-00040

**DOYLE SMTH and NORTH AMERICAN
INDUSTRIAL SERVICES, INC., a New
York Corporation,**

Defendant.

**NOTICE OF REMOVAL TO FEDERAL COURT
PURSUANT TO U.S.C. §1446(a) AND (b)**

NOW COME Defendants, North American Industrial Services, Inc. (“NAIS”) and Doyle Smith (“Smith”) (collectively “Defendants”), by and through their counsel, Litchfield Cavo, LLP, and remove the above-captioned lawsuit, pursuant to 28 U.S.C. §§1441 et seq., from the Circuit Court of Putnam County, West Virginia, where it has been assigned Civil Action No. CC-40-2020-C-173, to the United States District Court for the Southern District of West Virginia, Huntington Division, and in support thereof aver as follows:

1. NAIS was served with the process of the Complaint on November 17, 2020. Pursuant to 28 U.S.C. 1446(a), a copy of the Summons and Complaint served upon NAIS is attached hereto as Exhibit 1,
2. Mr. Smith was served with the process of the Complaint on November 19, 2020. A copy of the Summons, Complaint and affidavit of service is attached hereto as Exhibit 2.
3. Mr. Smith, prior to the retention of undersigned counsel, filed an Answer to the Complaint on December 7, 2020. A true and correct copy of this Answer is attached hereto as Exhibit 3.

4. A true and correct copy of the Docket Sheet maintained by the Circuit Court of Putnam County is attached hereto as Exhibit 4.

5. The instant action may be removed to the United States District Court of the Southern District of West Virginia pursuant to 28 U.S.C. §1441 (1991) as diversity of citizenship exists between Plaintiff and Defendants.

6. The time within which Defendants are required to file the Notice of Removal of this action to the United States District Court for the Southern District of West Virginia has not expired pursuant to 28 U.S.C. § 1446 as the case stated by the initial pleading was not removable, and Defendants learned of Plaintiff's citizenship upon receipt of Plaintiff's medical bills on or about December 18, 2020. A true and correct copy of the relevant portion of those bills is attached hereto as Exhibit 5.

7. As evidenced by the medical bills, Plaintiff was a citizen of South Carolina at the time of the subject incident. *See* Exhibit 5.

8. Plaintiff's counsel has represented in communications with undersigned counsel that Plaintiff, to the best of his knowledge, is currently a resident of South Carolina.

9. Mr. Smith is a citizen of West Virginia.

10. NAIS is a New York corporation with its principal place of business in New York.

11. There is thus complete diversity of citizenship among the parties to this matter.

12. Moreover, the matter in controversy exceeds \$75,000, thereby satisfying the jurisdictional requirements under 28 U.S.C. §1332.

13. According to Plaintiffs' Complaint, Plaintiff sustained injuries in an incident involving Mr. Smith (an employee of NAIS) that occurred on or about November 27, 2018.

14. The Complaint alleges that Plaintiff sustained injuries as a direct and proximate result of Defendants' alleged acts and conduct.

15. Plaintiff contends that he has sustained the following damages: past and future medical expenses; past and future lost wages; past and future mental pain and suffering; past and future physical pain and suffering; loss of enjoyment of life; and annoyance and inconvenience. See Exhibit 1, para. 13.

16. While Plaintiff's Complaint does not contain a request for a specific amount of monetary damages, the amount of alleged damages at issue for Plaintiff are believed to exceed the \$75,000 threshold required for diversity jurisdiction as information provided to Defendants suggests that Plaintiff has allegedly incurred at least \$30,000 in medical expenses for treatment that he contends was related to the subject incident.

17. Putnam County, West Virginia, where this action was initially filed, is within the jurisdiction of the United States District Court for the Southern District of West Virginia.

18. Concurrent with the filing of this Notice of Removal, Defendants have filed with the Clerk of the Circuit Court of Putnam County, West Virginia and has served upon Plaintiff's counsel a Notice of Filing Notice of Removal (attaching a copy of this document) advising that said Defendants have removed this action to the United States District Court for the Southern District of West Virginia, Huntington Division.

WHEREFORE, Defendants, North American Industrial Services, Inc. and Doyle Smith request that this case be removed from the Circuit Court of Putnam County, West Virginia, to the United States District Court for the Southern District of West Virginia.

Respectfully submitted,

LITCHFIELD CAVO, LLP

/s/ Colby S. Bryson

Colby S. Bryson, Esquire (WV I.D. #12152)

Two Gateway Center, 10th Floor

603 Stanwix Street

Pittsburgh, PA 15222

(412)291-8254

bryson@litchfieldcavo.com

*Counsel for North American Industrial Services,
Inc. and Doyle Smith*

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON**

BILLY JOE MUNSEY,

Plaintiff,

v.

CIVIL ACTION NO. 3:21-cv-00040

**DOYLE SMTH and NORTH AMERICAN
INDUSTRIAL SERVICES, INC., a New
York Corporation,**

Defendant.

CERTIFICATE OF SERVICE

I, Colby S. Bryson, Esquire, hereby certify that a true and correct copy of the foregoing *Notice of Removal*, has been served this 15th day of January, 2021, by U.S. first-class mail, postage prepaid and electronic mail, to the following:

Michael J. Del Giudice, Esquire
CICCARELLO, DEL GIUDICE & LAFON
1219 Virginia Street East, Suite 100
Charleston, WV 25301
Counsel for Plaintiff

/s/ Colby S. Bryson
Colby S. Bryson, Esquire (WV I.D. #12152)
*Counsel for North American Industrial Services,
Inc. and Doyle Smith*